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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/560,392
Filing Date: April 28, 2000
Appellant(s): BROWN ET AL.

MAILED

JUL 20 2007

GROUP 3600

Matthew W. Baca
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 5/25/2007 appealing from the Office action mailed 1/25/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

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(8) Evidence Relied Upon

Klug	6,823,327	11-2004
Gardenswartz	6,055,573	4-2000
Madison	2002/0023123	2-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 45-49, 51-55, and 57-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klug (6,823,327) in view of Gardenswartz (6,055,573) in view of Madison (2002/0023123).

Claims 45, 48, 49, 51, 54, 55, 57: Klug discloses a method, system, program for automatically electronically registering a user with a plurality of consumer providers, said method comprising the steps of:

receiving at each of a plurality of server systems a user profile comprising a plurality of profile elements transmitted in a particular transmittable data format for a particular user from a portable computer system, wherein each of said plurality of server systems is respectively associated with one of a plurality of consumer providers;

inserting each of said plurality of profile elements respectively into a specified plurality of electronic registration elements required for electronic registration at a particular server system from among said plurality of server systems; and

transmitting a registration indicator for said particular user from said particular server system to said portable computer system in said particular transmittable data format, such that

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said particular user is automatically registered with said plurality of consumer providers by transmitting said single user profile to said plurality of server systems; and

transmitting a registration information from said particular server system to said portable computer system (Abstract; Fig. 1; Fig 2; Fig. 3; Fig. 5; Fig. 6 ; Fig. 9).

Klug further discloses that the user registration information with indicators of who the user has successfully registered with can be stored at the user device(Fig. 1; col 6, lines 27-35).

Klug further discloses user profile information (Fig. 3).

Klug discloses that the user utilizes the Internet and browsers and computers (Fig. 1).

Klug does not explicitly disclose the utilization of cookies, a portable computer, or targeting.

However, Gardenswartz discloses the utilization of cookies (col 2, lines 3-55) and Gardenswartz further discloses targeting a user and a user registering (col 3, lines 30-45), and utilizing the Internet (Fig. 1), and utilizing a portable computer device (col 11, lines 55-65).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Gardenswartz's portable computer and utilizing profile information for targeting and utilizing standard Internet technologies such as cookies to Klug's utilizing the Internet and collecting of user profile information given to third party websites. One would have been motivated to do this in order to utilize the further location flexibility and convenient technical qualities of the Internet and to make better use of known user information for sending information of more likely interest to the user.

Additionally, the combination of the prior art renders obvious:

Generating a request to transmit a plurality of profile elements to a selected server system from among a plurality of server systems;

Transmitting said request to a portable computer system in response to a determination that said portable computer system is within a particular proximity to said plurality of server systems;

Receiving a user profile comprising said plurality of profile elements in a particular transmittable data format at said selected server system from said portable computer system;

Wherein said selected server system is identified at said portable computer system utilizing data within said plurality of profile elements specifying a consumer preference in response to a receipt of said request at said portable computer system.

Klug discloses generating a request to transmit a plurality of profile elements to a selected server system from among a plurality of server systems (Klug, Fig. 1);

Receiving a user profile comprising said plurality of profile elements in a particular transmittable data format at said selected server system from said portable computer system (Klug, Fig. 1).

Klug further discloses determining at the user computer based on user preferences which server to communicate with:

“(10) In either embodiment, the present invention may also provide a "mass" registration capability, wherein a user may request that the present invention automatically register the user at a plurality of web sites. For example, the user may be provided with a capability to search for web sites cooperating with the present invention by, for example,

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category and request an automatic registration at multiple web sites substantially simultaneously” (col 2, line 65-col 3, line 7).

Klug further discloses utilizing personal information, location information

“(4) Thus, in order to obtain these web site measurements, such web sites have begun requesting that each user provide information about himself/herself prior to the web site allowing access to web site services. That is, such web sites require a user to "register" at the web site, wherein the user is required to establish a user identification (user ID) and optionally a password with the web site as well as typically provide personal information such as, for example, the city of residence or family size” (col 1, lines 45-56).

Klug further discloses targeting users based on preferences:

“Further, such third party web sites 116 may periodically provide the registrar web site 100 with information related to the frequency that users registered at the registrar web site 100 have accessed the third party web sites 116. Therefore, by also storing this information, for example, in the registrar access log 152, the registrar web site 100 is able to determine the frequency and type of access of third party web sites 116 by users” (col 5, lines 45-55)

Klug further discloses that the user is requested to provide information:

“(4) Thus, in order to obtain these web site measurements, such web sites have begun requesting that each user provide information about himself/herself prior to the web site allowing access to web site services. That is, such web sites require a user to "register" at the web site, wherein the user is required to establish a user identification (user ID) and optionally a password with the web site as well as typically provide personal information such as, for example, the city of residence or family size (col 1, lines 45-56).

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FIGS. 6A and 6B provide a flowchart of the steps performed when supplying a third party web site 116 with registration information from the registrar web site 100, assuming that the third party web site has requested such information and that the request has been authenticated at the registrar web site 100 (col 3, lines 42-48);

Thus, the third party web site 116 requests and receives the user's registration information from the registrar web site 100 and stores the user's registration information in registration information database 148 directly accessible by the third party web site 116. Additionally note that when the registrar web site 100 receives a request from the third party web site 116 for user registration information, a registrar application 128 records the request for the user's registration information in a registrar access log data base 152. Thus, the registrar web site 100 maintains a log of the third party web sites requesting registration information. Further, such third party web sites 116 may periodically provide the registrar web site 100 with information related to the frequency that users registered at the registrar web site 100 have accessed the third party web sites 116. Therefore, by also storing this information, for example, in the registrar access log 152, the registrar web site 100 is able to determine the frequency and type of access of third party web sites 116 by users (col 5, lines 35-55).

(11) Referring now briefly to FIG. 3, this flowchart presents the steps a user performs when entering web site registration information into the fillout forms to be submitted to registrar. Accordingly, in step 304 the user determines whether to supply basic information (i.e., requested by a substantial number of third party web sites 116) as described in step 308 or to supply expanded information (i.e., more extensive information about the user so

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that, for example, registrar has sufficient user information to register the user at substantially all cooperating third party web sites 116). Note that at least in one embodiment, the basic information supplied in step 308 (i.e., the user's name, e-mail address, gender and date of birth) is also requested in the forms for expanded information in step 312 (col 8, lines 40-55).

Accordingly, assuming the user uses a WWW browser 120 to access a third party web site 116 as in step 404, the third party web site responds with a web site home page (step 408) typically having a registration fill-out form into which the user is requested to enter registration information. Note that the user may or may not be registered at this third party web site (col 9, lines 10-16).

Note that a third party web site 116 may request various categories of information from the registrar web site 100 related to the user. In particular, a third party web site may request: (a) basic information as discussed in step 308 of FIG. 3; (b) expanded information as discussed in step 312 of FIG. 3; (c) custom information, wherein selected fields from the basic and expanded information are provided; and (d) proprietary information wherein one or more additional user related information items may be provided wherein these items have been obtained by the registrar web site 100 by, for example, enriching and verifying the registration information obtained from the user as in step 256 of FIG. 2B". (col 10, line 58-col 11, line 5).

Klug does not explicitly disclose utilizing proximity to determine whether or not to communicate with a user.

However, Gardenswartz discloses utilizing location/geographic information to determine whether or not communicate with a user:

“(61) In step 1010, the registration server 14 presents the consumer with a reward for fulfilling the value contract. Delivery of the reward may be conditioned on the behavior of the consumer. For example, acceptance of the reward may require that the consumer to visit a specified retail location such as a specific grocery store. Accordingly, the value contract can be implemented to provide the consumer with an incentive to visit selected locations. The locations may be selected on the consumer's preestablished shopping habits (e.g., the grocery store that the consumer frequents most often), as determined from the master record corresponding to the consumer in the purchase history database 8. After step 1010, the process proceeds to step 1014” (col 16, lines 35-50).

Gardenswartz further discloses utilizing user preference information to determine what to communicate to the user or not:

“The online profile may include information such as the consumer's name CID, e-mail address, product/brand preferences, demographic information, work address, home address, whether the consumer has any babies, and whether the consumer has any pets such as a cat, dog, bird, or fish. Preferably, the online profile includes at least one item of information that is stored (or is to be stored) in the purchase history database 8. While referred to as an online profile, the profile may be generated or obtained on an offline basis, such as by filling out a card in a grocery store, for example. Other forms of registration may include a consumer entering registration information at a kiosk in the grocery store after scanning the bar code or alternatively swiping the magnetic strip of his or her shopper loyalty card through a magnetic strip reading device. The profile preferably includes information of how to transmit by computer information to the consumer, such as the consumer's e-mail address, IP (Internet

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protocol) address, or any information which may be used to electronically send information to the consumer, including, for example, through a paging device or a portable computer (col 11, lines 42-65).

(78) Accordingly, steps 1100 through 1112 may be implemented to engage in different targeted messages with different classifications of consumers. Since the classifications are based on the offline purchase history of the consumers, the targeted messages can be targeted based on the consumers offline tastes and preferences. If the targeted messages are interactive messages, the flexibility of the interactive messages permits each different message to be tailored based on the inputs received from consumer, further enhancing the degree to which advertisements and offers can be targeted” (col 20, lines 40-50).

And, Madison discloses communicating with a portable computer system in response to a determination that said portable computer system is within a particular proximity to said plurality of server systems/website/particular locations (Abstract; Fig. 2; Fig. 3; paragraph [7, 32]) and that based on the position of the user a request for demographic information will or will not be made ([32]).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Gardenswartz’s and Madison’s utilizing proximity to determine whether or not to communicate to a user to Klug’s communicating with a user, targeting a user, and user location information. One would have been motivated to do this in order to communicate with the user when the information may be of higher relevance to the user.

Claim 46, 52, 58: Klug and Gardenswartz and Madison disclose the above and Klug further discloses storing said electronic registration in association with said particular registration indicator at said particular server system (Abstract; Fig. 1; Fig 2; Fig. 3; Fig. 5; Fig. 6; Fig. 9).

Claim 47, 53, 59: Klug and Gardenswartz and Madison discloses the above and Klug further discloses that in response to receiving said registration indicator at said particular server system, retrieving said electronic registration for said particular user (Abstract; Fig. 1; Fig 2; Fig. 3; Fig. 5; Fig. 6; Fig. 9).

(10) Response to Argument

Examiner notes that the combination of the prior art renders obvious the features of the Appellant's independent claim 1.

In reference to independent claim 1, the combination of the prior art renders obvious:

generating a request to transmit a plurality of profile elements to a selected server system from among a plurality of server systems (Klug, Figures 1, 4a; Fig 4a, item 408, item 424);

transmitting said request to a portable computer system in response to a determination that said portable computer system is within a particular proximity to said plurality of server systems (Klug, Fig. 3, item 308; col 1, lines 45-56 ; Madison, [32]);

receiving a user profile comprising said plurality of profile elements in a particular transmittable data format at said selected server system from said portable computer system (Klug, Figures 1, 3, 4a), wherein said selected server system is identified at said portable computer system utilizing data within said plurality of profile elements specifying a consumer preference in response to a receipt of said request at said portable computer system (Klug, Figure

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4a, items 408 and 412; col 6, lines 27-40; col 2 , lines 55-65),
said user profile is associated with a particular user of said portable computer
system (Klug, Figure 4, items 308 and 312), and
each of said plurality of server systems is respectively associated with one of a
plurality of consumer providers (Klug, Figure 1 and col 1, lines 30-37); and

registering said particular user with a consumer provider of said plurality of consumer
providers in response to a receipt of said user profile at said selected server system, wherein said
consumer provider is associated with said selected server system (Klug, Figure 1).

And, the preceding is obvious in light of the rejection above.

On page 10 of the Appellant's Appeal Brief filed 5/25/2007, Appellant states that the
combination of the prior art does not render obvious:

"generating a request to transmit a plurality of profile elements to a selected server
system from among a plurality of server systems. . . wherein said selected server system is
identified at said portable computer system utilizing data within said plurality of profile elements
specifying a consumer preference in response to a receipt of said request at said portable
computer system."

Examiner notes that it is the Applicant's claims as stated in the Applicant's claims that
are being rejected with the prior art. Also, although the claims are interpreted in light of the
specification, limitations from the specification are not read into the claims. See *In re Van
Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). And, Examiner notes that claims are

given their broadest reasonable construction. See *In re Hyatt*, 211 F.3d 1367, 54 USPQ2d 1664 (Fed. Cir. 2000).

Examiner further notes that while specific references were made to the prior art, it is actually also the prior art in its entirety and the combination of the prior art in its entirety that is being referred to. Also, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Also, Examiner notes that it must be presumed that the artisan knows something about the art apart from what the references disclose. In *re Jacoby*, 309 F.2d 513, 135 USPQ 317 (CCPA 1962). The problem cannot be approached on the basis that artisans would only know what they read in references; such artisans must be presumed to know something about the art apart from what the references disclose. In *re Jacoby*. Also, the conclusion of obviousness may be made from common knowledge and common sense of a person of ordinary skill in the art without any specific hint of suggestion a particular reference. In *re Bozek*, 416 F.2d 1385, USPQ 545 (CCPA 1969). And, every reference relies to some extent on knowledge or persons skilled in the art to complement that which is disclosed therein. In *re Bode*, 550 F.2d 656, USPQ 12 (CCPA 1977).

In regards to the features of “generating a request to transmit a plurality of profile elements to a selected server system from among a plurality of server systems”, Examiner notes that Klug discloses that the third party website/server requests registration/profile information from the user and/or registrar website (Figures 1, 4a; Fig 4a, item 408, item 424). Examiner

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further notes that there are numerous websites/server systems (Fig. 1; Fig. 1, item 116). Hence, Klug discloses that a selected server system/website from among several server systems/websites requests the transmission of profile elements. Note that the claim 45 does NOT state that the user cannot contact the third party/server system before the third party/server system requests profile elements from the user.

Also, note that the website(s) in Klug are associated with different server(s):

“The World Wide Web (WWW) is a global communications network having a client-server model as a paradigm for communications. That is, users on client nodes utilizing so called "web browsers" navigate the WWW to access desired server nodes (known as web sites) for at least obtaining information from the server nodes such as hypertext, audio, video, virtual reality, data, etc” (col 1, lines 30-37).

Hence, the website(s) in Klug are also analogous with server(s).

Hence, Klug renders obvious generating a request to transmit a plurality of profile elements to a selected server system from among a plurality of server systems.

In regards to the features of, “wherein said selected server system is identified at said portable computer system utilizing data within said plurality of profile elements specifying a consumer preference in response to a receipt of said request at said portable computer system”.

Note that the claim language does NOT specify deciding whether or not to send the profile information based on the consumer preferences that identify a selected server system. Rather, claim 45 states that when the server system/third party requests a user profile, the user system identifies the server system/third party that made the request. Also, note that the claim 45 does NOT do any further steps with the identified server. That is, no further actions are taken or not taken based on the server identification.

Again, note that the websites in Klug are analogous with servers. And, in Klug, the websites are each analogous with different third parties. And, Klug discloses that the user computer can locally store user profile information and information on which websites/servers the user has registered with (col 6, lines 27-40; col 2, lines 55-65). And, Klug further discloses that a server system can be identified as having been priorly selected by a user before or not (Fig. 4a, item 412). And, note that Klug’s user selecting which websites or not to register with and then recording this information functions as recording the user preference of which websites the user prefers to belong to or not. That is, when the user has recorded which website(s) the user has registered with, the user has also recorded which website(s) the user prefers.

Hence, in Figure 4a, step 408, the third party/selected server system makes a request to the user for the user's profile elements. And, in Figure 4a, step 412 the user system checks whether the user system has registered with the third party/server system before. Hence, the user system checks its own information/profile to see whether it has priorly registered with the requesting third party/server system. And, by checking whether the user system has priorly registered, the user system checks if the user system has a preference for that particular third party/server system.

Hence, Klug renders obvious wherein said selected server system is identified at said portable computer system utilizing data within said plurality of profile elements specifying a consumer preference in response to a receipt of said request at said portable computer system.

On page 10 Appellant states that the combination of the prior art does not render obvious:

"transmitting said request to a portable computer system in response to a determination that said portable computer system is within a particular proximity to said plurality of server systems" (i.e., using proximity of a portable computer system to a plurality of server systems as a determining factor in whether to transmit a request to transmit a plurality of profile elements)".

However, Klug further discloses utilizing personal information and/or location information in reference to communicating with a user (Fig. 3, item 308; and citation below):

"(4) Thus, in order to obtain these web site measurements, such web sites have begun requesting that each user provide information about himself/herself prior to the web site allowing access to web site services. That is, such web sites require a user to "register" at the web site, wherein the user is required to establish a user identification (user ID) and optionally a password

with the web site as well as typically provide personal information such as, for example, the city of residence or family size” (col 1, lines 45-56).

Hence, Klug generally uses location information in determining communications with a user.

And, Madison particularly discloses transmitting said request to a portable computer system in response to a determination that said portable computer system is within a particular proximity to said plurality of server systems:

“[32]...In step 312, the geographic information is supplied to the website server, which can then use the geographic information to target advertising to, and to glean demographic information from, the client” (Madison, [32]).

Notice that Madison utilizes the geographic information concerning the user/portable computer to determine how or whether to target the user and also how or whether to obtain demographic information from the user. Notice in Madison that utilizing geographic information concerning the user/portable computer to decide whether to obtain demographic information renders obvious using proximity to determine whether to send a profile request. Note that gleaning demographic information based on location is the same as requesting profile information based on proximity. Hence, Madison renders obvious these features. Hence the combination of the prior art renders obvious these features.

Also, Examiner notes that the determining if a user is in proximity of a server system(s) is equivalent to determining if the user is proximate to a particular location of relevance as disclosed in the prior art above. The city, store, offline merchant, online merchant, disclosed in the prior art above utilize electronic communications to communicate with the user via the

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Internet. Hence, determining if a user is proximate to a server system is equivalent to determining if a user is proximate to a particular geographic location/area (city, online merchant, offline merchant, etc) where that geographic location/area utilizes electronic communications to communicate with the user via the Internet. And, the prior art above discloses that the geographic locations (city, online merchant, offline merchant, etc) utilize electronic communications and the Internet.

Hence, the combination of the prior art renders obvious the features of the Appellant's claims.

Additionally, Examiner notes that Klug, Gardenswartz, and Madison are analogous art. Klug is related to profiling a user(s) over the Internet via registration, Gardenswartz to profiling and targeting a user(s) over the Internet, and Madison to targeting a user over the Internet based on known user information.

Also, when there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense. In that instance the fact that a combination was obvious to try might show that it was obvious under §103.

If a person of ordinary skill in the art can implement a predictable variation, and would see the benefit of doing so, §103 likely bars its patentability. Moreover, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual

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application is beyond that person's skill. KSR Int'l Co. v. Teleflex, Inc., No 04-1350 (U.S. Apr. 30, 2007).

And, KSR states that it is obvious to recite combination which only unite old elements with no change in their respective functions and which yield predictable results. KSR, 127 S.Ct. at 1741, 82 USPQ2d at 1396.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Arthur Duran

Primary Examiner

7/17/2007

Conferees:

James Myhre

Vincent Millin

